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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 CHATOIAN ET AL,

No. C04-02790 MJJ

12 Plaintiff,

13 v.

**ORDER DENYING PLAINTIFFS'
MOTION TO AMEND AND GRANTING
DEFENDANT'S MOTION TO
STRIKE/DISMISS**

14 COUNTY OF MARIN ET AL,

15 Defendant.

16
17 **INTRODUCTION**

18 Before the Court is Plaintiffs Darcelle Chatoian (“Chatoian”), Cynthia Tasca (“Tasca”),
19 Corin Rasmussen (“Rasmussen”), and Korissa Russell’s (“Russell”) (collectively, “Plaintiffs”)
20 Motion to Amend Class Action. (Docket No. 74.) Defendants County of Marin (“the County”),
21 Marin County Sheriff’s Department (“Sheriff’s Department”), and Marin County Sheriff Robert
22 Doyle’s (“Sheriff Doyle”) (collectively, “Defendants”) oppose Plaintiffs’ Motion. Also before the
23 Court is Defendants’ Motion to Strike/Dismiss the Doe Defendants from the First Amended
24 Complaint (“FAC”). (Docket No. 80.)

25 Coming after this Court’s grant of summary judgment in favor of all named Defendants on
26 all counts, Plaintiffs now seek to amend their FAC to substitute previously named Does 1 through 25
27 with the actual names of the individual deputies involved. For the following reasons, the Court
28 **DENIES** Plaintiffs’ Motion to Amend and **GRANTS** Defendants’ Motion to Strike/Dismiss the Doe
Defendants.

FACTUAL BACKGROUND

Plaintiffs bring this civil rights action for violations of their constitutional rights resulting from unlawful strip searches. Generally, Plaintiffs allege Marin County Sheriff's deputies ("Deputies") subjected Plaintiffs to "pre-arrainment strip and/or visual body cavity searches" without reasonable suspicion that the searches would produce contraband. (FAC at ¶ 7.)

Specifically, the FAC sets forth the following incidents of improper conduct by the Deputies toward Plaintiffs following their arrest and transport to Marin County Jail: (1) that, around late July or early August, 2003, Deputies forcibly stripped search Plaintiff Tasca and confined her in the nude when she refused to remove her clothes willingly (*Id.* at ¶ 14); (2) that, on or about November 2, 2003, three male Deputies forcibly removed Plaintiff Chatoian's clothes and placed her nude in a cell (*Id.* at ¶ 15); (3) that, on or about March 10, 2004, Deputies subjected Plaintiff Russell to a visual body cavity search (*Id.* at ¶ 17); and (4) that, on or about July 4, 2004, several male Deputies observed Plaintiff Rasmussen undress after being ordered to removed her clothing inside her cell (*Id.* at ¶ 20).

Plaintiffs assert federal claims under 42 U.S.C. § 1983, as well as state-law claims under California Penal Code § 4030 and the Bane Civil Rights Act (California Civil Code § 52 and 52.1(b)). Plaintiffs currently list, however, only the County, the Sheriff's Department, and Sheriff Doyle as named defendants. (*Id.* at ¶¶ 6, 10, 11.) Plaintiffs sued all Deputies involved in the alleged acts as Does 1-100, and sued unknown policymakers as Roes 1-20. (*Id.* at ¶¶ 7, 9.) Neither the Complaint nor First Amended Complaint declare specific ignorance as to the Deputies' identities. (*See id.* at ¶ 7.)

PROCEDURAL BACKGROUND

Plaintiffs filed their Complaint and First Amended Complaint on July 12, 2004, and February 1, 2005, respectively. (Docket Nos. 1, 33.) On December 7, 2004 and February 11, 2005, the parties filed the original and amended Joint Case Management Statements, respectively, which described all parties to the action as served and foresaw only the addition of new plaintiffs. (*See Cassidy Decl.* at ¶¶ 7-8, Exs. E, F; Docket Nos. 25, 35.) On March 24, 2005, Defendants submitted, in their Rule 26(a)(1) disclosures, the names and contact information of twenty four police officers

1 and deputies thought to be involved in the alleged incidents. (Cassidy Decl. at ¶ 3, Ex. C at 2-5.)
2 By November 9, 2005, Plaintiffs had deposed many of the Deputies, who identified themselves and
3 others as involved in the incidents alleged. (Cassidy Decl. at ¶ 4.)

4 On January 1, 2006, the named Defendants filed a Motion for Summary Judgment originally
5 set to be heard March 7, 2006. (Docket No. 45.) This Court later vacated the hearing and ordered
6 supplemental briefing on the issues. (Docket No. 58.) After the parties argued the Motion on March
7 27, 2007, this Court filed an order on April 6, 2007, granting summary judgment in favor of the
8 named Defendants on all counts. (Docket No. 73.) This Court refrained, however, from granting
9 summary judgment as to the unnamed individual defendants. On June 5, 2007, Plaintiffs filed the
10 current motion to amend their complaint substitute the names of individual Deputies for Does 1
11 through 25.

12 ANALYSIS

13 A. **California Law, Rather Than The Federal Rules, Governs Plaintiffs' Request To 14 Substitute The Deputies For Doe Defendants.**

15 The law is clear that state statute of limitations, including relation back provisions, generally
16 govern Section 1983 actions. *See Merritt v. County of Los Angeles*, 875 F.2d 765, 768 (9th Cir.
17 1989). However, the parties dispute the applicable legal standard governing Plaintiff's request to
18 amend its complaint to substitute the Deputies for the Doe defendants. Defendants contend that
19 Rule 15 governs Plaintiffs' request to amend their First Amended Complaint, and that the request
20 should therefore be denied because of Plaintiffs' considerable delay in seeking leave to amend and
21 the resulting prejudice to Defendants. Plaintiffs aver that their request for leave to amend is
22 governed instead by California Code of Civil Procedure Section 474, and that because Plaintiffs
23 have complied with the requirements of that statute, leave to amend should be granted.

24 The Court agrees with Plaintiffs that, under Ninth Circuit precedent, it is obligated to follow
25 California law, rather than Federal Rule of Civil Procedure 15, in determining whether Plaintiff may
26 substitute the Deputies for the Doe defendants. *See Rumberg v. Weber Aircraft Corp.*, 424 F. Supp.
27 294, 297-98 (C.D. Cal. 1976) (California's "qualified four-year limitations period" governing Doe
28 actions embodied in California Code of Civil Procedure is substantive law under *Erie* and can be

1 applied by federal courts); *Lindley v. General Electric Co.*, 780 F.2d 797, 800-01 (9th Cir. 1986)
2 (“we adopt *Rumberg* as the law of the circuit”). In particular, taken together, California Code of
3 Civil Procedure Sections 474 and 583.210 specify “a plaintiff who names a Doe defendant in his
4 complaint and alleges that the defendant’s true name is unknown has three years from the
5 commencement of the action in which to discover the identity of the Doe defendant, to amend the
6 complaint accordingly, and to effect service of the complaint.” *Lindley*, 780 F.2d at 799 (citing Cal.
7 Civ. Proc. Code §§ 474, 581a).¹ “There can be little doubt that §§ 474 and 583.210, taken together,
8 are ‘integral’ to California’s statute of limitations scheme and embody state substantive policy.”
9 *Brennan*, 626 F. Supp. at 929.

10 **B. Plaintiffs Have Complied With California Code Of Civil Procedure Section 474.**

11 For purposes of Section 474, the primary focus is on Plaintiffs’ actual knowledge regarding
12 the identity of the fictitious defendants at the time of the initial complaint, and not on the diligence
13 of the party after the filing of the initial complaint in discovering the identities of the fictitious
14 defendants. *See Joslin v. H.A.S. Brokerage*, 184 Cal. App. 3d 369, 376 (1986) (“There is no
15 requirement under § 474 that a plaintiff exercise reasonable diligence in discovering either the true
16 identity of fictitious defendants or the facts giving him a cause of action against such person.”);
17 *Balon v. Drost*, 20 Cal. App. 4th 483, 487 (1993) (“Section 474 is restricted to the knowledge of the
18 plaintiff at the time of the filing of the complaint.”) (quotation omitted). Accordingly, Defendants’
19 evidence that Plaintiffs learned the identities of the Deputies soon after they filed the action has little
20 bearing on whether Section 474 has been satisfied.²

21 Defendants contend that Section 474 should not apply because Plaintiffs are not merely

22 ¹ California Code of Civil Procedure Section 581a, discussed in *Rumberg* and *Lindley*, is the predecessor to current
23 California Code of Civil Procedure 583.210. Both set a three-year cap on serving Doe defendants from the date the original
24 complaint is filed. *See Brennan v. Lermer Corp.*, 626 F. Supp. 926, 931 n.8 (N.D. Cal. 1986); *Mike Silverman & Associates*
25 *v. Drai*, 659 F. Supp. 741, 744 n.5 (C.D. Cal. 1987); *Lindley*, 780 F.2d at 799 n.3 (“[Section 581a] has since been repealed,
but a virtually identical provision has been enacted as Cal.Civ.Proc.Code § 583.210.”).

26 ² At least one California authority indicates that courts can decline to let plaintiffs invoke Section 474 to substitute
27 named defendants for Doe defendants where there is a showing of unreasonable delay or specific prejudice. *See Sobeck &*
28 *Associates, Inc. v. B 7 R Investments No. 24*, 215 Cal. App. 3d 861, 869 (1989). Here, however, Defendants have not made
a sufficient showing of undue delay or specific prejudice. Though Plaintiffs’ delay in seeking to substitute the individual
Deputies was substantial, the Court does not find the delay to be unreasonable on this record, particularly given the state of
the proceedings, in which discovery has not closed and a trial date has not been set. Moreover, Defendants do not make any
showing of specific prejudice with respect to the interests of the individual Deputies.

1 substituting in named defendants, but are seeking to file a “new and different” claim that no longer
2 proceeds on a *Monell* theory of liability. The relevant test under California law, however, is whether
3 the amendment is based on the “same general set of facts” as the original and refers to the “same
4 accident and same injuries.” *Austin v. Massachusetts Bonding & Ins. Co.*, 56 Cal. 2d 596, 600-01
5 (1961); see also *Fireman’s Fund Ins. Co. v. Sparks Const., Inc.*, 114 Cal. App. 4th 1135, 1150
6 (2004). Plaintiffs’ claims against the Deputies clearly meet this standard. Indeed, the specific
7 actions of the deputies in conducting strip and body cavity searches has been the foundation of
8 Plaintiffs’ claims from the beginning, and the question of whether an underlying constitutional
9 violation occurred was already an element of Plaintiff’s *Monell*-based theory of liability.

10 Plaintiffs’ failure to explicitly allege that they did not know the true identity of the Does, at
11 the time the initial complaint was filed, does not prevent them from invoking Section 474 under
12 California law. There is no indication in the FAC, nor evidence before the Court, that Plaintiffs
13 were aware of the identities of the Doe defendants at the time that they filed the FAC. Indeed,
14 Defendants themselves contend that Plaintiffs learned the identities of the individual deputies “early
15 in the case through discovery” (Opp. at 6:6-7), not prior to filing the complaint. Under such
16 circumstances, Plaintiffs’ technical failure to allege actual ignorance of the identities of the Does
17 will not bar further amendment to substitute named defendants. *See Dieckmann v. Superior Court*,
18 175 Cal. App. 3d 345, 356-58 (1985).

19 Accordingly, the Court finds that Plaintiffs have complied with California Code of Civil
20 Procedure Section 474.

21 C. Plaintiffs Have Not Complied With California Code Of Civil Procedure Section
22 583.210.

The same authorities that establish that Section 474 governs here also make clear that Section 583.210, California’s three-year limitation on serving Doe defendants with process, is also applicable as part of California’s substantive limitations scheme.³ Section 583.210 requires the

²⁷ See *Rumberg*, 424 F. Supp. at 298 (“Although CCP § 474 gives a plaintiff extra time to uncover the identity of an unknown defendant, [Section 583.210’s predecessor statute] CCP § 581a sets the outside time limit at three years after the complaint is filed”); *Lindley*, 780 F.2d at 799 (under Section 583.210’s “nearly identical” predecessor statute, Section 581a, a plaintiff who names a Doe defendant in his complaint “has three years from the commencement of the action . . . to effect

1 summons and complaint to be served within 3 years of filing, and for return of summons within 60
2 days after the 3-year period expires. Defendants specifically move to dismiss and/or strike the
3 claims against the Deputies on this basis.

4 Because Plaintiffs filed their initial complaint on July 12, 2004,⁴ Plaintiffs were obligated
5 under Section 583.210 to serve the individual Deputies no later than July 12, 2007. Here, Plaintiffs
6 filed their motion to amend the complaint on June 5, 2007, before the deadline to serve the Deputies,
7 but noticed the hearing for August 7, 2007, a date after the service deadline. In their reply brief
8 filed July 20, 2007 – after the service deadline – Plaintiffs acknowledge that the Deputies were
9 not served before the Section 583.210 deadline, arguing:

10 Plaintiffs aver that fictitious Doe Defendants are not parties to the
11 action, as leave has not yet been granted to include them in the
12 litigation. Plaintiffs request leave of court to substitute named
Defendants, and upon the granting of leave, Defendants will be duly
served as parties to the litigation.

13 (Reply at 9:3-7.)⁵

14 Plaintiffs' failure to serve the Deputies prior to July 12, 2007 is fatal to their attempt to assert
15 individual claims against these Doe defendants. The three-year limit is "mandatory" and is "not
16 subject to extension, excuse, or exception except as expressly provided by statute." Cal. Civ. Proc.
17 Code § 583.250(b); *see also Tzolov v. International Jet Leasing, Inc.*, 214 Cal.App.3d 325, 327
18 (1989). None of the enumerated bases on which the three-year time limit on service can be tolled
19 exist in the present action. *See* Cal. Civ. Proc. Code §§ 583.220 (tolling where general appearance
20 entered by defendant in question), 583.240 (tolling where defendant not amenable to process of the
21 court, action was stayed and stay affected service, validity of service was subject of litigation, or
22 service was impossible, impracticable or futile due to causes beyond plaintiff's control) & 583.330

24 service of the complaint"); *Silverman*, 659 F. Supp. at 744 ("under California law, a plaintiff's failure to identify and serve
25 fictitious defendants within three years of the date the complaint is filed bars any later action against those defendants");
Brennan, 626 F. Supp. at 929-30 (Section 474 "toll[s] the statute of limitations as of the date the original complaint is filed,
26 provided the defendant is identified and served within the three years prescribed by § 583.210").

27 ⁴ Defendants' opposition brief inaccurately states the date that Plaintiffs' original complaint was filed. (Opposition
at 2:1 and 11:28-12:1.)

28 ⁵ Similarly, when the requirements of Section 583.210 were discussed at oral argument, Plaintiffs did not contend
that the individual Deputies had been served prior to the three-year deadline.

1 (tolling based on written stipulation or oral agreement in open court); *accord Silverman*, 659 F.
2 Supp. at 745 n.6; *Tzolov*, 214 Cal.App.3d at 327.

3 Plaintiffs argue that Section 583.210 should not bar suit because Plaintiffs managed to file
4 the instant motion for leave to amend before the three-year service deadline. Plaintiffs contend that,
5 as a practical matter, they cannot serve the complaint on the Deputies until after leave to amend has
6 been granted. The Court finds this argument insufficient to allow tolling under any of the
7 statutorily-enumerated doctrines. Section 583.240(d) contains the catch-all tolling provision that
8 governs the analysis of Plaintiffs' argument; it allows tolling where:

9 [s]ervice, for any other reason, was impossible, impracticable, or futile
10 due to causes beyond the plaintiff's control. Failure to discover
relevant facts or evidence is not a cause beyond the plaintiff's control
for the purpose of this subdivision.
11

12 To the extent that service upon the individual Deputies was rendered "impossible,
13 impracticable, or futile" because this Court had not yet ruled on Plaintiffs' instant motion by the July
14 12, 2007 service deadline, the Court finds that such circumstances were not "due to causes beyond
15 the plaintiff's control." To the contrary, the undisputed record establishes that Plaintiffs have been
16 aware of the true identities of the individual Deputies since early in the litigation, yet made a tactical
17 decision not to proceed against them individually under after this Court granted summary judgment
18 on the *Monell*-liability claims on April 5, 2007. Even after the Court's summary judgment ruling,
19 Plaintiffs waited another two months, until June 5, 2007, to file their motion to amend. Moreover,
20 Plaintiffs noticed the hearing more than two months out, on this Court's August 7, 2007 motion
21 calendar, even though this district's local rules require only 35 days notice before hearing.
22 Plaintiffs also made no effort to have the motion heard on shortened time.

23 Accordingly, the Court finds that Plaintiffs' failure to comply with California Code Of Civil
24 Procedure Section 583.210, which is part of California's substantive limitations framework
25 governing Doe actions, prevents Plaintiffs from proceeding against the individual Deputies.
26 Plaintiffs' claims against the individual Deputies are time-barred due to failure to serve within the
27 statutory period. *See* Cal. Civ. Proc. Code § 583.210.

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CONCLUSION

2 For the foregoing reasons, the Court **DENIES** Plaintiffs' Motion to Amend and **GRANTS**
3 Defendants' Motion to Strike/Dismiss the Doe Defendants. The Clerk of the Court is **DIRECTED**
4 to enter final judgment in favor of Defendants.

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6 **IT IS SO ORDERED.**

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9 Dated: December 21, 2007

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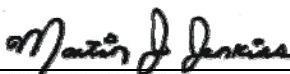
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MARTIN J. JENKINS
UNITED STATES DISTRICT JUDGE